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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/018,661   | 06/18/2002  | Jamal Baina          | 11016-0007          | 1980             |
| 22902  | 7590        | 06/30/2005           |                     | EXAMINER         |
| CLARK & BRODY<br>1090 VERNON AVENUE, NW<br>SUITE 250<br>WASHINGTON, DC 20005 |             |                      | HOLMES, MICHAEL B   |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 2121                |                  |

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/018,661             | BAINA ET AL.        |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Michael B. Holmes      | 2121                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE (3) MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 21 December 2001.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-6 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,2 and 4 is/are rejected.  
 7) Claim(s) 3,5 and 6 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 21 December 2001 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. 10/018,661.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                       |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10232002</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)   |
|   | 6) <input checked="" type="checkbox"/> Other: <u>Detailed Office Action</u> . |



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## Examiner's Detailed Office Action

1. This Office Action is responsive to communication received on December 12, 1001.
2. Claims 1-6 have been examined.

### Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. The invention as disclosed in claims 1-6 are rejected under 35 U.S.C. 101 as being non-statutory subject matter. While applicant's invention is directed towards technological arts.

Applicant's claim language is not limited to practical applications. In particular, examiner has found the claimed subject matter, to be one of three exclusions recognized, outside the statutory category of invention, an abstract idea. Examiner contends that applicant's invention as claimed relates a computational model or a mathematical manipulation of a function or equation, as such, a process that merely manipulates an abstract idea or performs a purely mathematical algorithm is nonstatutory despite the fact that it might inherently have some usefulness. In *Sarkar*, 588 F.2d at 1335, 200 USPQ at 139, the court explained why this approach must be followed:

No mathematical equation can be used, as a practical matter, without establishing and substituting values for the variables expressed therein. Substitution of values dictated by the formula has thus been viewed as a form of mathematical step. If the steps of gathering and substituting values were alone sufficient, every mathematical equation, formula, or algorithm having any practical use would be per se subject to patenting as a "process" under 101. Consideration of whether the substitution of specific values is enough to convert the disembodied ideas present in the formula into an embodiment of those ideas, or into an application of the formula, is foreclosed by the current state of the law.

Furthermore, for such subject matter to be statutory, the claimed process must be limited to a practical application of the abstract idea or mathematical algorithm in the technological arts.

*See Alappat*, 33 F.3d at 1543, 31 USPQ2d at 1556-57 (quoting *Diamond v. Diehr*, 450 U.S. at 192, 209 USPQ at 10). *See also Alappat* 33 F.3d at 1569, 31 USPQ2d at 1578-79 (Newman, J., concurring) ("unpatentability of the principle does not defeat patentability of its practical applications") (citing *O 'Reilly v. Morse*, 56 U.S. (15 How.) at 114-19). A claim is limited to a practical application when the method or system, as claimed, produces a concrete, tangible and useful result; i.e., the method recites a step or act of producing something that is concrete, tangible and useful. *See AT &T*, 172 F.3d at 1358, 50 USPQ2d at 1452. *See MPEP § 2106(IV)* Applicant is advised to make the appropriate corrections in an attempt to gain patentability.

The claimed invention as a whole must accomplish a practical application. That is, it must produce a "useful, concrete and tangible result." *State Street*, 149 F.3d at 1373, 47 USPQ2d at 1601-02. Remember, the claims define the property rights provided by a patent, and thus require careful scrutiny. Therefore, it is not enough to set forth invention in the specification.

The claims must also reflect the scope and breath of applicant's invention.

5. Therefore, claims 1-6 are rejected under 35 USC § 101.

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6. It should be noted that if the claimed subject matter were amended to recite the invention of which, being implemented on a computer or processor or computer-implemented method or process or whatever word(s) or phrase(s) the written description of the specification recites for that feature(s) of the computer. The rejection under 35 USC § 101 would be withdrawn. Moreover, if assistance is required or applicant would like to request a telephone interview, examiner may be reached at the contact information listed below.

7. Finally, although the subject matter of claims 3, 5 & 6 appears to define over the prior art. However, any indication of allowability is being held in abeyance pending the resolution of the Title 35 USC § 101 issues.

### Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 2 & 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Quincy et al. "Expert Pattern Recognition Method and for Technology-Independent Classification of Video," IEEE, 1988* in view of *Quincy et al. "Speech Quality Assessment Using Expert Pattern Recognition Techniques," IEEE, 1989.*

Regarding claim 1. *Quincy et al. "Expert Pattern Recognition Method and for Technology-Independent Classification of Video,"* describes a method of evaluating an visual sequence the

method being characterized in that it implements:

- a) training, comprising allocating a subjective score NS(i) to each of N(0) training sequences Si (where i = 1, 2, ..., N.) presenting degradations identified by a training vector MO(i) which is given to each sequence S(i) in application of a first vectorizing method, in order to build up a database of N(0) training vectors M0(j) including only said identified degradations and subjective scores NS(j) [see Abstract, B. Proposed Solution, page 1304-1305 & C. Statistical Pattern Recognition Classifier Module, page 1306];
- b) classifying the N(0) training vectors MO(i) into k classes of scores as a function of the subjective scores NS(1), that have been allocated to them, so as to form k training sets EA(j) (where j = 1, 2, , k) which have k significant training scores NSR(j) allocated thereto [see Abstract, B. Proposed Solution, page 1304-1305 & C. Statistical Pattern Recognition Classifier Module, page 1306];
- c) for each visual sequence (see A. Background, page 1304, *Examiner interprets the reference to the Specialized Video and Audio Services, as the audiovisual component. Moreover, similar processing applied to one may be applied to the other, is known to one of ordinary skill in the art*) to be evaluated, generating a vector MO using said first vectorization method [see B. Objective Parameter Selection, page 1305 & C. Statistical Pattern Recognition Classifier Module, page 1306]; and
- d) allocating to the visual sequence (see A. Background, page 1304, *Examiner interprets the reference to the Specialized Video and Audio Services, as the audiovisual component. Moreover, similar processing applied to one may be applied to the other, is known to one of ordinary skill in the art*) for evaluation the significant training score NSR(j) that corresponds to

the training set Ea(j) containing the vector that is closest to the vector MO in the sense of vector quantification [*see B. Objective Parameter Selection, page 1305 & C. Statistical Pattern Recognition Classifier Module, page 1306*].

*Quincy et al.* "Expert Pattern Recognition Method and for Technology-Independent Classification of Video, does not explicitly describe a method of evaluating a audio sequence." However, *Quincy et al.* "Speech Quality Assessment Using Expert Pattern Recognition Techniques, explicitly describes a method of evaluating a audio sequence."

Regarding claim 1. *Quincy et al.* "Speech Quality Assessment Using Expert Pattern Recognition Techniques, describes a method of evaluating a audio sequence" describes a method of evaluating an audio sequence the method being characterized in that it implements:

- a) training, comprising allocating a subjective score NS(i) to each of N(0) training sequences Si (where i = 1, 2, ..., N.) presenting degradations identified by a training vector MO(i) which is given to each sequence S(i) in application of a first vectorizing method, in order to build up a database of N(0) training vectors M0(j) including only said identified degradations and subjective scores NS(j) [*see System Overview, page 208*];
- b) classifying the N(0) training vectors MO(i) into k classes of scores as a function of the subjective scores NS(1), that have been allocated to them, so as to form k training sets EA(j) (where j = 1, 2, , k) which have k significant training scores NSR(j) allocated thereto [*see Distortion Probability, page 209*];
- c) for each audio sequence to be evaluated, generating a vector MO using said first vectorization method [*see Abstract, page 208*]; and

d) allocating to the audio sequence for evaluation the significant training score NSR(j) that corresponds to the training set Ea(j) containing the vector that is closest to the vector MO in the sense of vector quantification [*see Distortion Probability & Expert System*, page 209]. It would have been obvious at the time the invention was made to a persons having ordinary skill in the art to combine *Quincy et al.* "Expert Pattern Recognition Method and for Technology-Independent Classification of Video," with *Quincy et al.* "Speech Quality Assessment Using Expert Pattern Recognition Techniques," because automatic assessment of voice transmission quality is increasingly important to users and providers of communication services and products [*see Abstract*].

Regarding claim 2. *Quincy et al.* "Expert Pattern Recognition Method and for Technology-Independent Classification of Video," describes a method according to claim 1, characterized in that it comprises: between steps b) and c): b1) for each training set EA(j), using a second vectorization method to generate by vector quantification a reference dictionary (*Examiner interprets a dictionary to be a list e.g., items of data or words stored on a computer (database) for reference i.e., for information retrieval or word processing*) D(j) made up of N(j) reference vectors VR(1) (where 1 = 1, 2, . . . , NJ) [*see Fig. 1 & Fig 2; B. Objective Parameter Selection*, page 1305 & C. *Statistical Pattern Recognition Classifier Module*, page 1306]; and between steps c) and d): c1) selecting amongst the reference vectors VR(1) of the k reference dictionaries, the reference vector VR(e) which is closest to said vector MO [*see Fig. 1 & Fig 2; B. Objective Parameter Selection*, page 1305 & C. *Statistical Pattern Recognition Classifier Module*, page 1306]; and in that step d) allocates to the audiovisual (*Examiner interprets the obvious teaching*

*of the audio portion by the Quincy et al. "Speech Quality Assessment Using Expert Pattern Recognition Techniques," reference) sequence for evaluation the significant training score NSR(J) corresponding to the reference dictionary containing said closest reference vector Vr(I) [see Fig. 1 & Fig 2; B. Objective Parameter Selection, page 1305 & C. Statistical Pattern Recognition Classifier Module, page 1306].*

Regarding claim 4. *Quincy et al. "Expert Pattern Recognition Method and for Technology-Independent Classification of Video," describes a method according to claim 1, characterized in that the significant training scores NSR.(j) of at least some (Examiner interprets some to be an unknown, undetermined, or unspecified unit or thing; being one, a part, or an unspecified number of something e.g., as a class or group, named or implied. Therefore, examiner interprets at least "one" as the number of reference dictionaries) of the k reference dictionaries are distributed in non-uniform manner along the score scale [see III. Research and Development Steps, page 1306].*

### Claim Objection

10. Claims 3, 5 & 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

## Correspondence Information

11. Any inquires concerning this communication or earlier communications from the examiner should be directed to Michael B. Holmes, who may be reached Monday through Friday, between 8:00 a.m. and 5:00 p.m. EST. or via telephone at (571) 272-3686 or facsimile transmission (571) 273-3686 or email [Michael.holmesb@uspto.gov](mailto:Michael.holmesb@uspto.gov).

If you need to send an Official facsimile transmission, please send it to (703) 746-7239.

If attempts to reach the examiner are unsuccessful the Examiner's Supervisor, Anthony Knight, may be reached at (571) 272-3687.

Hand-delivered responses should be delivered to the Receptionist @ (Customer Service Window Randolph Building 401 Dulany Street Alexandria, VA 22313), located on the first floor of the south side of the Randolph Building.



**Michael B. Holmes**

Patent Examiner  
Artificial Intelligence

Art Unit 2121

United States Department of Commerce  
Patent & Trademark Office

Thursday, June 16, 2005

MBH